

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

September 6, 2006

State Mail - N440
Ricky B. Hickman
State Mail No. 00235593
Sussex Correctional Institution
23203 DuPont Boulevard
P. O. Box 500
Georgetown, DE 19947

Adam D. Gelof, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

**RE: State v. Ricky B. Hickman
Defendant ID No. 0301005176 (R-1)**

Dear Mr. Hickman and Mr. Gelof:

On May 16, 2006, the Defendant filed his first Motion for Postconviction Relief concerning convictions for delivery of cocaine, and delivery of cocaine within 1000 feet of a school. Those convictions were the result of a jury trial; and on direct appeal, the Supreme Court affirmed the convictions. *Hickman v. State*, 2004 Del. LEXIS 146 (Del. Mar. 24, 2004). The State and the Defendant have been given the opportunity to submit authority as to their respective positions. The Defendant's memorandum was filed in August, 2006; and I have had the opportunity to consider the Motion, as well as the respective positions of the parties. This is the Court's decision denying Mr. Hickman's Postconviction Motion.

In Ground One, the Defendant attacks the identification and a photo line-up that was involved in the evidence in his case. This claim is procedurally barred under Rule 61(i)(4) as this is an issue that was previously adjudicated, both in his trial and on his direct appeal.

In Ground Two, he complains that one of his convictions used to determine his habitual offender status was obtained in a violation of the *Brady*¹ rule because the State withheld exculpatory information. This claim is dismissed because the Defendant is apparently attempting to attack another conviction. If he wants to attack another conviction, he should do so with a Rule 61 application as to that conviction. This is not the proper procedural mechanism or process to attack another earlier conviction.

Even if it were, the Defendant would be procedurally barred under Rule 61(i)(3) as he has not offered any reasons as to why this matter was not raised before the Trial Court or on appeal, nor has he established any prejudice from this conclusory allegation. It is dismissed.

In Ground Three, he attacks another conviction used in the State's habitual offender Motion, and it is dismissed for the same reasons as in Ground Two.

In Ground Four, the Defendant complains that a double jeopardy violation occurred in his case because he was convicted of delivery of cocaine, and delivery of cocaine within 1000 feet of a school involving the same conduct. This claim is not procedurally barred and will be addressed as to its merits.

This claim is denied because the Legislature specifically set forth its intent to punish this same offense under two different statutes. In 16 Del. C. §4767(b), the Legislature states that:

Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of this chapter or any other provision of law, and a conviction under this section shall not merge with a conviction for violation of another provision of this chapter or

¹Brady v. Maryland, 373 U.S. 83 (1963).

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other provision of law.

The Legislature has clearly spoken. The Legislature is permitted to punish the same offense under two statutes if it is clear that was the legislative intent. *LeCompte v. State*, 516 A.2d 898 (Del. 1986). With the aforementioned language included in the statute, the Legislature has clearly let its intent be known.

Therefore, there is no double jeopardy claim and this matter is dismissed on its merits.

The Defendant's Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary